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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Norfolk Shipbuilding & Drydock Corporation
Request for Reconsideration
File: B-219988.8
Date: October 23, 1986

DIGEST

Request for reconsideration is denied where protester raises no new facts or legal arguments which were not previously considered.

DECISION

Norfolk Shipbuilding and Drydock Corporation (Norfolk) requests that we reconsider our decision in Norfolk Shipbuilding and Drydock Corp., B-219988.7, Sept. 26, 1986, 86-2 C.P.D. ¶ _____. We denied Norfolk's claim for proposal preparation costs and the costs of pursuing its protest, including attorney's fees, following our denial in part and dismissal in part of its protest, and our denial of its claim for costs, in Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 C.P.D. ¶ 667.

We deny the request for reconsideration.

Norfolk had protested the termination of its contract No. DAAK01-85-C-B250, awarded by the Army Materiel Command (AMC) for the construction of four vessels. AMC had terminated Norfolk's contract because of uncertainty whether the solicitation's purchase description adequately reflected the agency's needs. In our December 16, 1985 decision, we found no basis to question AMC's decision to terminate the contract. We also dismissed as premature Norfolk's additional protest basis that AMC would not change the government's requirements when it issued a revised solicitation. In view of our decision denying in part and dismissing in part Norfolk's protest, we denied its claim for proposal preparation costs and the costs of filing and pursuing its protest.

In a claim filed with our Office July 24, 1986, Norfolk sought to recover proposal preparation costs, and the costs

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of filing and pursuing its protest, because the Army had transferred the procurement to the Navy's Military Sealift Command (MSC), which issued a solicitation Norfolk considered substantially different from the one under which Norfolk was originally awarded a contract. Norfolk contended that it could not recover its proposal costs incurred in responding to the original Army solicitation, which required vessel design, by responding to the Navy solicitation, which required the supply of existing vessels. Norfolk asserted that the ability to engage in a recompetition was crucial to our earlier denial of its claim for proposal preparation costs.

In our September 26, 1986 decision, we noted five major differences, enumerated by the Army, between the new specification and that which was in Norfolk's contract. We pointed out that a prerequisite to entitlement to proposal preparation costs as a result of cancellation of a solicitation (and termination of the resultant contract) was a showing that the agency's actions with respect to the claimant's offer were arbitrary or capricious. We noted our conclusion in our December 16, 1986, decision that the Army's decision to terminate Norfolk's contract for the convenience of the government was reasonable in light of the Army's need to revise solicitation specifications to reflect its actual needs. We also noted that since we had determined the solicitation cancellation was proper, Norfolk did not qualify for the reimbursement of its costs. We pointed out that the ability of Norfolk to engage in a recompetition played no part in our earlier decision to deny its claim for costs, contrary to Norfolk's assertion. Furthermore, we noted that Norfolk's assertion that the solicitation issued by the Navy was substantially different from that under which it was awarded a contract only served to support the Army's position that revised specifications were required to reflect changes in the government's actual needs.

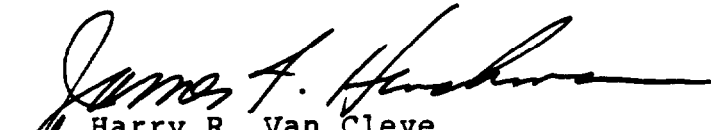
In its request for reconsideration, Norfolk contends that we did not give any weight to internal Army documents, enclosed with its claim, which Norfolk believes show the Army's decision to terminate its contract was arbitrary. The documents indicate that the procuring activity disagreed with AMC headquarters' direction to terminate Norfolk's contract.

Under our Bid Protest Regulations, a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of a decision is deemed warranted and must specify any errors of law made in the decision or information not previously considered. 4 C.F.R. § 21.12(a) (1986). Information not

previously considered refers to information which was overlooked by our Office or information to which the protester did not have access when our initial decision was pending. See Federal Sales Service, Inc.--Request for Reconsideration, B-222798.3, July 23, 1986, 86-2 C.P.D. ¶ 99.

We did not overlook the internal Army documents which Norfolk submitted with its claim. The documents merely showed internal dissension within the Army over the decision to terminate. They did not show that the Army's decision to terminate Norfolk's contract was arbitrary. Rather, as we indicated in our denial of Norfolk's claim, the Army's decision to terminate Norfolk's contract was reasonable in light of the Army's need to revise solicitation specifications to reflect its actual needs, as shown by the five major differences in the new specifications. Norfolk did not dispute the differences. Indeed, Norfolk contended that the new solicitation was substantially different from that under which it was awarded a contract. As we noted earlier, this only serves to support the Army's position that revised specifications were required.

Since Norfolk has raised no new facts or legal arguments which were not previously considered; its request for reconsideration is denied.


Harry R. Van Cleve
General Counsel